

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13075 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

AAKASH PRAKASH PATEL

Versus

COMMISSIONER OF HIGHER EDU.

Appearance:

1. Special Civil Application No. 13075 of 2004
MR PK JANI for Petitioner No. 1
MR DIPEN DESAI, AGP for Respondent No. 1-2
MR MITUL K SHELAT for Respondent No. 3
MR DC DAVE for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 26/10/2004

ORAL JUDGEMENT

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#. Rule. Mr.Dipen Desai, learned AGP waives service of

rule for respondent Nos.1 and 2, Mr.Mitul Shelat, learned advocate waives service of rule for respondent No.3 and Mr.Dhaval Dave, learned advocate waives service of rule for respondent No.4.

#. With the consent of the learned advocates appearing for the respective parties, the matter is taken up for final hearing today.

#. In this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for appropriate writ, order or direction directing respondent No.4 to refund the tuition fees paid by the petitioner for getting admission in respondent No.4 institution (four years' tuition fees).

#. It is the case of the petitioner that the petitioner has got admission in respondent No.4 - Pharmacy College through the Joint Admission Committee and, initially, the petitioner deposited Rs.32,000/- with the Joint Admission Committee. It is the case of the petitioner that, as, the petitioner got admission in Kesar Sal Medical College in the First Year Medicine, the petitioner required his original marksheet which was lying with respondent No.4 institution, and, therefore, when the petitioner approached to get his original certificate on cancellation of his admission and when the petitioner approached the Joint Admission Committee, the petitioner was told to get No Objection Certificate from respondent No.4 institution. It is the case of the petitioner that respondent No.4 insisted that if the petitioner wants No Objection Certificate, the petitioner should pay four years' tuition fees which comes to Rs.1,28,000/-, otherwise No Objection Certificate will not be given and his original marksheet will not be returned, and, therefore, the petitioner was constrained to deposit the amount of Rs.1,28,000/- and on deposit of the said amount, the petitioner was issued No Objection Certificate as well as the original marksheet. Therefore, the petitioner has preferred the present petition under Article 226 of the Constitution of India for the aforesaid prayers.

#. Mr.P.K.Jani, learned advocate appearing on behalf of the petitioner, has submitted that when the petitioner has not studied in respondent No.4 institution and the petitioner has not even got admission and that his admission is cancelled, respondent No.4 cannot retain Rs.1,28,000/- towards four years' tuition fees, and, therefore, appropriate order be passed directing respondent No.4 to refund the said amount. It is further

submitted that so far as respondent No.4 institution is concerned, there is no loss to the institution, more particularly, in view of the fact that on the seat of the petitioner, other student is already admitted and respondent No.4 institution will get the aforesaid amount from the new student. Therefore, it is submitted that respondent No.4 cannot be permitted to have profiteering, and, therefore, it is requested to allow the present petition.

#. Mr.D.C.Dave, learned advocate appearing on behalf of respondent No.4, has tried to argue the case considering Rule 23.2 of Rules for admission to first year courses of degree / diploma; engineering / pharmacy after standard 12 (HSC) science stream and has submitted that the institution is well within its power to retain the said amount for four years' tuition fees on cancellation of the admission of a student. Therefore, it is submitted that the action of respondent No.4 in retaining the amount is in consonance with Rule 23.2 of the aforesaid Rules, and, therefore, requested to dismiss the present petition.

#. So far as the amount of Rs.32,000/- deposited by the petitioner with the Joint Admission Committee is concerned, Mr.Dipen Desai, learned AGP, under the instruction, has submitted that after deduction of registration charges etc., the said amount will be refunded to the petitioner on making appropriate application with the Joint Admission Committee.

#. Heard the learned advocates for the respective parties.

#. It is an admitted position that the admission of the petitioner is cancelled and on the seat of the petitioner, some other student is already admitted and the institution will get four years' tuition fees from that student, therefore, there will not be any loss to the institution. In that view of the matter, if respondent No.4 institution will get the amount from the new student, then respondent No.4 cannot be permitted to have four years' tuition fees from both the students and cannot have profiteering. Tuition fees is not for the purpose of having profiteering.

##. Considering the facts and circumstances of the case, more particularly, in view of the fact that on the seat of the petitioner, some other student is already admitted and respondent No.4 institution will get four years' tuition fees from that student, there is no justification

by respondent No.4 in retaining the amount of four years' tuition fees which is deposited by the petitioner. Otherwise, it will amount to have profiteering by respondent No.4. In that view of the matter, without considering larger question with regard to interpretation of Rule 23.2 of the aforesaid Rules and in the peculiar facts and circumstances as well as considering the fact that there will not be any loss to respondent No.4 institution, respondent No.4 is directed to refund the amount of four years' tuition fees deposited by the petitioner to the petitioner within a period of four weeks from today. So far as the amount deposited with the Joint Admission Committee is concerned, on making appropriate application to the Joint Admission Committee, the Joint Admission Committee is directed to refund the said amount after deducting registration charges etc. to the petitioner within a period of four weeks from the date of receipt of the application from the petitioner.

##. Subject to what is stated above, this petition is allowed. Rule is made absolute to the aforesaid extent. No costs. Direct service is permitted.

(M.R.Shah,J)

(pathan)